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23364 7590 08/13/2010 BACON & THOMAS, PLLC 625 SLATERS LANE FOURTH FLOOR ALEXANDRIA, VA 22314-1176				
EXAMINER HAMILTON, LALITA M				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

1 UNITED STATES PATENT AND TRADEMARK OFFICE

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4 BEFORE THE BOARD OF PATENT APPEALS
5 AND INTERFERENCES
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8 *Ex parte* PING LIONG TJOA
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11 Appeal 2009-010006
12 Application 09/319,243
13 Technology Center 3600
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16 Before MURRIEL E. CRAWFORD, ANTON W. FETTING, and
17 JOSEPH A. FISCHETTI, *Administrative Patent Judges*.
18 FETTING, *Administrative Patent Judge*

19 DECISION ON REQUEST FOR REHEARING¹

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF CASE

This is a decision on rehearing in Appeal No. 2009-010006. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

Requests for Rehearing are limited to matters misapprehended or overlooked by the Board in rendering the original decision. 37 C.F.R. § 41.52.

ISSUES ON REHEARING

The Appellant raises two issues in the Request for Rehearing. The first issue relates to whether the art shows the geometry as claimed. The second issue is whether the panel properly construed the limitation, "adapted to the palm of the hand". Claim 12.

ANALYSIS

We found in our decision that claims 12 and 14-23 were either anticipated by Bosko or unpatentable as obvious over a combination with Bosko. (Decision 9:23 - 10:6).

The Appellant argues that (1) Bosko's barbell structurally does not meet the limitations of claim 12 of a conversely concave region on its side toward an intermediate element. The Appellant argues that

Bosko shows in Fig. 7 a bar 52 with threaded connections at each end for receiving a connector to which a container 50, 51 is attached. The containers are spherical and as such do not contain a "conversely concave region." The "conversely concave region" is a transition region between the "spherical region" of the end element and the "turning region" which leads to the intermediate element. Bosko has a complete sphere and a rod, which are joined together without any transition.

Request 1-2. The Appellant did not argue this particular limitation in the Appeal or Reply Briefs, so the panel was not in a position to respond to this in the Decision. We find that the portion of the sphere close to the annular neck reference number 66 in Figure 7 does form such a concave region, however.

The Appellant next contends that our construction that “adapted to the palm of the hand” means structured so the palm can be in contact does not follow from the definition of the term “adapted”. The Appellant contends the word “adapted” should be construed as another dictionary definition meaning “conform”. Request 2-3.

During examination of a patent application, pending claims are given their broadest reasonable construction consistent with the specification. *In re Prater*, 415 F.2d 1393, 1404-05 (CCPA 1969); *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1369, (Fed. Cir. 2004). The Appellant is merely proffering another of the definitions, in a dictionary in place of the definition the panel found, viz. to make suitable to or fit for a specific use or situation, in the Findings of Fact at Decision 5. Either one of such meanings would be appropriate in view of the Specification, which again shows no more than making contact with the palm, as in “held on the outside between the palms” at Specification: 4:26-27. Thus, the construction of structured so the palm can be in contact found by the panel is predicated on the definition of adapted as suitable for a specific use and that use was found to be contact with the palm. We find that the panel properly construed the term “adapted to the palm of the hand” based on the underlying facts.

CONCLUSION

Nothing in the Appellant's request has convinced us that the panel overlooked or misapprehended the geometry of Bosko's device or the proper construction of the term "adapted" as argued by the Appellant. Accordingly, we deny the request.

DECISION

To summarize, our decision is as follows:

- We have considered the REQUEST FOR REHEARING
- We DENY the request that we reverse the Examiner as to claims 12 and 14-23.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2007).

DENIED

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BACON & THOMAS, PLLC
625 SLATERS LANE
FOURTH FLOOR
ALEXANDRIA VA 22314-1176